STATE OF NEW YORK

228

2017-2018 Regular Sessions

IN ASSEMBLY

January 5, 2017

Introduced by M. of A. BICHOTTE -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to the publication of information regarding waivers of compliance with state contract provisions concerning minority and women-owned business enterprise participation requirements

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 6 of section 313 of the executive law, as amended by chapter 175 of the laws of 2010, is amended to read as follows:

6. **(a)** Where it appears that a contractor cannot, after a good faith effort, comply with the minority and women-owned business enterprise participation requirements set forth in a particular state contract, a contractor may file a written application with the contracting agency requesting a partial or total waiver of such requirements setting forth the reasons for such contractor's inability to meet any or all of the participation requirements together with an explanation of the efforts undertaken by the contractor to obtain the required minority and women-owned business enterprise participation. In implementing the provisions of this section, the contracting agency shall consider the number and types of minority and women-owned business enterprises located in the region in which the state contract is to be performed, the total dollar value of the state contract, the scope of work to be performed and the project size and term. If, based on such considerations, the contracting agency determines there is not a reasonable availability of contractors on the list of certified business to furnish services for the project, it shall issue a waiver of compliance to the contractor. In making such determination, the contracting agency shall first consider the availability of other business enterprises located in the region and shall thereafter consider the financial ability of minority and women-owned

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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businesses located outside the region in which the contract is to be performed to perform the state contract.

(b) Within thirty days of the issuance of a partial or total waiver of compliance as provided in paragraph (a) of this subdivision, the contracting agency shall:

(i) report the issuance of the waiver to the director; and

(ii) publish on the contracting agency's website: (A) information identifying the contract, including the value of the contract; (B) the name of the contractor receiving the waiver; (C) the date of the waiver; (D) whether the waiver was a total or partial waiver; and (E) the specific contract provisions to which the waiver applies.

§ 2. Paragraphs (h) and (i) of subdivision 3 of section 311 of the executive law, paragraph (h) as amended and paragraph (i) as added by section 1 of part BB of chapter 59 of the laws of 2006, are amended and a new paragraph (j) is added to read as follows:

(h) notwithstanding the provisions of section two hundred ninety-six of this chapter, to file a complaint pursuant to the provisions of section two hundred ninety-seven of this chapter where the director has knowledge that a contractor may have violated the provisions of paragraph (a), (b) or (c) of subdivision one of section two hundred ninety-six of this chapter where such violation is unrelated, separate or distinct from the state contract as expressed by its terms; [~~and~~]

(i) to streamline the state certification process to accept federal and municipal corporation certifications[~~.~~]**; and**

(j) to keep a record of partial and total waivers of compliance reported pursuant to paragraph (b) of subdivision six of section three hundred thirteen of this article and to make such record publicly available on the division's website. The record shall provide, at a minimum: (A) information identifying the contract, including the value of the contract; (B) information identifying the contracting agency; (C) the name of the contractor receiving the waiver; and (D) the date of the waiver.

§ 3. This act shall take effect on the sixtieth day after it shall have become a law; provided, however, that:

a. the amendments made to subdivision 6 of section 313 of the executive law by section one of this act shall not affect the expiration of such article and shall be deemed expired therewith;

b. the amendments made to subdivision 3 of section 311 of the executive law by section two of this act shall not affect the expiration of such article and shall be deemed expired therewith; and

c. the director of the division of minority and women's business development may immediately promulgate rules and regulations and take all other necessary actions to implement the provisions of this act on or before such effective date.